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# WCPE

Great Classical Music, 24 Hours A Day

March 19, 2002

Office of the General Counsel  
Copyright Office  
James Madison Building Room LM-304  
First and Independence Avenue SE  
Washington, DC 20003

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GENERAL COUNSEL  
OF COPYRIGHT

Dear Sirs and Madams,

This is in reference to the rates proposed in Digital Performance Rights in Sound Recordings and Ephemeral Recordings as proposed by the Copyright Arbitration Royalty Panel (CARP) in Docket 2000-9 CARP DTRA 1 & 2.

WCPE a small non-profit entity. We stream our non-commercial educational station (as broadcast on the air) on the Internet without any fees, charges, advertisements, or profit-making devices; we only ask for voluntary donations. Failure to donate does not limit any access to our Internet listening.

We felt that our concerns in the CARP process could best be represented by a focused pleading of an *amicus* nature to the panel. Because of our non-profit single-station status, we did not feel that we could bear the costs of the full procedure, so we requested to have our financial obligation limited to those specific items directly related to our burden on the CARP.

In its January 18, 2001 Order in this proceeding, the Copyright Office itself supported a parallel position which envisioned allowing small parties to submit focused pleadings.

However, from a list over five pages long, one participant -- the Recording Industry Association of America -- objected to submission of *amicus curae* briefs. The objection had the effect of requiring all wishing to comment to participate only by making a full case, with all the attendant costs and burdens.

In the Order dated March 16, 2001, the Copyright Office (against its own prior recommendation) was forced to accept the objection of RIAA, because these *amicus* pleadings could only be accepted if no party interposed objection. RIAA alone objected.

As a result, WCPE(FM) felt forced to withdraw. We offer that the RIAA objection against allowing comments from smaller parties effectively removed representative voices of the many smaller parties who will be forced to abide by the final decision.

In the March 16th Order, the Copyright Office specifically noted that Manning Broadcasting, SBR Creative Media, Performing Artists Society of America, and WCPE(FM), requested the right to file pleadings. However, as some have reported, these were not the only four small entities who expressed wishes to comment. The service list of that time contained dozens of small entities who were not specifically noted in the Order.

The Copyright Office concluded the Order by encouraging smaller entities to pool their resources and participate jointly; however, the filing deadline of April 11th was not extended. Soon thereafter, all of the small entities which we are aware of filed letters of withdrawal from the proceeding.

It was our finding that it simply was too great a burden for small entities like us with limited knowledge and resources to meet, act, and pool our efforts -- much less raise the funds to file a Written Direct Case as a full participating member.

Many broadcasters and webcasters have commented negatively about the proposal. Because their parallel concerns have already been voiced, we not repeat them here.

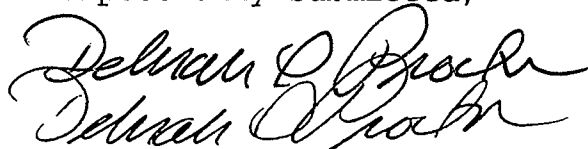
Instead, we offer that the proceedings were inherently flawed in that the failure to allow small entities to voice their concerns forced a crabbed presentation of the facts and denied a full picture to the CARP panel.

Exclusion of small entities by requiring full participant costs to be heard parallels the effects of voting poll taxes, and stifles the submission of comments by denying an equal voice and a level playing field to those who would be most impacted by the proceeding -- but least able to afford participating in it.

Despite the CARP's hard work and honest effort this omission inherently flawed the recommendations.

Therefore, we feel that the implementation of the fees and reporting structure as recommended should be stayed; that it should be re-evaluated only after the representatives of small organizations are allowed to submit comment within a reasonable time and at a reasonable cost to ensure that we and other small entities are fairly represented in a process which will formulate rules to which we will be financially and procedurally bound.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Deborah S. Proctor".

Deborah S. Proctor  
General Manager